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Report of the Independent Expert on the enjoyment of all human rights by older persons

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comprehensive report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, prepared pursuant to Council resolution 24/20. In the present report, the Independent Expert assesses the implementation of existing international instruments with regard to older persons while identifying best and good practices and gaps in the implementation of existing laws related to the promotion and protection of the rights of older persons. The report also provides an analysis of the human rights implications of the implementation of the Madrid International Plan of Action on Ageing, 2002.

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I. Introduction

1. On 27 September 2013, in its resolution 24/20, the Human Rights Council created the mandate of the Independent Expert on the enjoyment of all human rights by older persons. Rosa Kornfeld-Matte was appointed as Independent Expert in May 2014 and took office on 1 June 2014.

2. The mandate entrusted to the Independent Expert is new and all-encompassing. It recognizes the challenges that older persons face related to the enjoyment of all human rights, and the fact that those challenges require in-depth analysis and action to address protection gaps. Pursuant to resolution 24/20, the Independent Expert is requested to assess the implementation of existing international instruments with regard to older persons. In doing so, she is asked to identify both best practices and gaps in the implementation of existing law related to the promotion and protection of the rights of older persons. Another key aspect of the mandate is the assessment of the human rights implications of the implementation of the Madrid International Plan of Action on Ageing, 2002.

3. As part of her mandate, the Independent Expert is also requested to raise awareness of the challenges faced in the realization of all human rights by older persons, and to ensure that older persons receive information about those rights.

4. In discharging her mandate, the Independent Expert continued to take into account the views of States and other stakeholders, as stipulated in paragraph 5 (b) of Council resolution 24/20. She also sought to integrate a gender and disability perspective throughout and paid particular attention to, among others, older women, persons with disabilities, persons of African descent, individuals belonging to indigenous communities, persons belonging to national or ethnic, religious and linguistic minorities, rural persons, persons living on the streets, and refugees.

5. The Independent Expert conducted her work, as requested, in cooperation with States in order to foster the implementation of measures that contribute to the promotion and protection of the rights of older persons. She also participated in the annual sessions of the Open-ended Working Group on Ageing in order to ensure a coordinated approach while avoiding unnecessary duplication. While the focus of the Independent Expert's analysis is on implementation of existing laws and resulting protection gaps, the Working Group is mandated to identify possible gaps in the existing international framework of the human rights of older persons and how best to address them, including by considering the feasibility of further instruments and measures.

6. The present report is submitted pursuant to paragraph 6 of Council resolution 24/20, in which the Council requested the Independent Expert to present a comprehensive report at its thirty-third session. The present report is comprehensive in the sense that it covers all aspects of the Independent Expert's mandate. It provides a snapshot of the situation of older persons, based on information collected during the reporting period, through the analysis of implementation gaps and best practices, assesses the human rights implications of the implementation of the Madrid International Plan of Action on Ageing, 2002, and highlights the areas in which more in-depth analysis and continued monitoring of developments is required to ensure the promotion and protection of the human rights of older persons.

7. The report is based on the information provided to the Independent Expert during her tenure, between June 2014 and June 2016, and in the light of the all-encompassing nature of the mandate, does not claim to exhaustively cover the whole spectrum of challenges faced by older persons in the realization of their human rights. As a matter of fact, in her initial report to the Human Rights Council, the Independent Expert identified a number of thematic priorities that require thorough analysis. During her tenure, she was

able to report to the Council only once, in September 2015, on autonomy and care (A/HRC/30/43).

8. The present report should be read and considered in conjunction with the Independent Expert's previous reports to the Human Rights Council, especially those on her country visits to Slovenia (A/HRC/30/43/Add.1), Austria (A/HRC/30/43/Add.2) and Mauritius (A/HRC/30/43/Add.3), as well as the report on her visit from 9 to 18 May 2016 to Costa Rica (A/HRC/33/44/Add.1). Other reports also need to be taken into account, namely the report of the Independent Expert outlining her understanding of the mandate and her priorities for her first tenure (A/HRC/27/46) and her thematic report on autonomy and care and the activities undertaken during her first tenure.

9. In accordance with Council resolution 24/20, the present report will also be brought to the attention of the seventh session of the Open-ended Working Group on Ageing, which is scheduled to be held in New York from 12 to 15 December 2016.

II. Activities of the Independent Expert

10. Since her previous report to the Human Rights Council in September 2015, the collection of best practices in the implementation of existing law has continued to be a focus of the Independent Expert's activities. On 15 September 2015, during the thirtieth session of the Human Rights Council, the Independent Expert participated in a side event on best practices in the implementation of existing laws on the human rights of older persons, organized jointly by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Republic of Austria, with the support of Argentina and Slovenia, as well as the NGO Committee on Ageing, Geneva, and the International Longevity Centre Global Alliance. The event aimed to provide a better understanding of the challenges faced by States in the implementation of existing law related to the promotion and protection of the rights of older persons and to identify and share best practices and recent developments in that area. It allowed for an open dialogue with the aim of formulating concrete recommendations for an effective and integrated response at the national and global levels.

11. On 6 October 2015, further to General Assembly resolution 69/146, the Independent Expert held her first interactive dialogue with the Third Committee of the General Assembly. She particularly welcomed the opportunity for an exchange of views with delegations in New York and regrets that the valuable practice will not be continued in 2016.

12. From 10 to 12 February 2016, the Independent Expert participated in the fifth international conference of the Réseau d'études international sur l'âge, la citoyenneté et l'intégration socio-économique, entitled "Ageing and Empowerment: Between Resources and Vulnerabilities", held in Lausanne. The conference sought to explore vulnerabilities and resources linked to ageing from the perspective that older persons can maintain or acquire agency throughout their life trajectories. The Independent Expert reiterated the need for a human rights-based approach that is centred on the inclusion of older persons in society in order to ensure autonomous and healthy ageing.

13. On 11 and 12 April 2016, the Independent Expert participated in the International Conference on Ageing, held in Brdo pri Kranju, Slovenia, to discuss ways and means to effectively empower older persons. In her opening remarks, she particularly welcomed the Conference's contribution towards shifting the focus of the discussion from stocktaking to concrete action, calling on the participants to rethink ageing and to improve implementation at the global level. The Independent Expert was very pleased that, further to the conference,

Argentina and Slovenia launched the Group of Friends on the human rights of older persons.

14. In accordance with her mandate, the Independent Expert continued to pay attention to specific groups of older persons, including refugees and climate-displaced persons, as well as persons facing conflict, emergency or disaster situations. On 15 March 2016, on the occasion of World Social Work Day, the International Association of Schools of Social Work and the International Federation of Social Workers organized a conference in Geneva entitled "Refugees and Displaced Persons: the Role of Social Work". The Independent Expert contributed to the panel discussion on forced migration and the role of social work, highlighting the disproportionate impact emergency situations have on older persons. The need to build older persons' resilience in disaster situations was also the focus of the Independent Expert's contribution at the Climate Displacement Roundtable organized in Geneva on 25 and 26 April 2016 by Displacement Solutions and the Global Migration Centre of the Graduate Institute Geneva.

15. On 3 and 4 May 2016, the Independent Expert participated in the Human Rights Working Group Dialogue Series on Frontier Issues of the United Nations Development Group on the issue of Human Rights and Urbanization in New York, which was jointly organized by the United Nations Human Settlements Programme (UN-Habitat) and OHCHR, under the auspices of the United Nations Housing Rights Programme. In the dialogue session, discussions focused on ways in which strengthened enjoyment of human rights in cities for all can facilitate strategic, sustainable and inclusive solutions, with a view to implementing the 2030 Agenda for Sustainable Development. Also discussed was the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), to be held in Quito in October 2016, which will result in a new urban agenda to guide inclusive, integrated and sustainable urbanization for the next 20 years. She also participated in the Habitat III cross-cutting expert group meeting on human rights and urbanization, organized by OHCHR. At those meetings, the Independent Expert called, inter alia, for the participation of older persons in the design of urban form and urban infrastructure to ensure that they address the needs for social and sustainable cities in which people can live and work, and that older persons benefit from elder care in their neighbourhood.

16. The Independent Expert also actively advocated for human rights to be taken into consideration at the first World Humanitarian Summit, which was held from 23 to 24 May 2016 in Istanbul, Turkey, to improve the protection of older persons affected by conflict, disaster and displacement.

III. Human rights of older persons

A. Background

17. Older persons represent a large, and the fastest growing, segment of the global population. By 2050, for the first time, there will be more older persons than children under the age of 15 worldwide, and it is projected that the number of older persons will more than double from 900 million currently to nearly 2 billion.[1] A demographic transformation of such magnitude has far-reaching implications for society at all levels.

[1] See www.un.org/en/development/desa/population/publications/pdf/popfacts/PopFacts_2014-4Rev1.pdf.

18. The population is ageing in all regions of the world. While Western Europe continues to have the oldest population, 67 per cent of older persons currently live in developing countries. In the years to come, most of the projected growth will take place in the global South, as some countries and regions entered the demographic transition only recently.

19. The older population itself is also ageing. The group of persons aged 80 or over, which currently accounts for 14 per cent of older persons, will grow to 21 per cent in 2050.

B. Regulatory and normative developments

20. In her first report to the Human Rights Council, the Independent Expert provided an overview of the international instruments and initiatives pertaining to the rights of older persons. The 2012 report of the United Nations High Commissioner for Human Rights to the Economic and Social Council (E/2012/51 and Corr.1) contains a thorough analysis of existing international instruments and gaps in the protection regime. In 2011, OHCHR had prepared a valuable background paper for the Open-ended Working Group on Ageing, in which it reviewed existing international human rights norms as they apply to older persons and summarized the relevant work of some international human rights mechanisms, particularly treaty monitoring bodies and special procedures, in addressing substantive human rights issues in all regions of the world.[2] The present report therefore focuses on the regulatory and normative developments that have taken place since the completion of the Independent Expert's previous report.

21. On 15 June 2015, the States members of the Organization of American States approved the Inter-American Convention on Protecting the Human Rights of Older Persons. It has not yet received the two ratifications required for the Convention to enter into force.

22. The Convention is the first regional normative instrument dedicated to older persons and represents a major step forward in addressing the human rights of older persons. The Convention is an example of good practice that could inspire other regions, as it allows States to strengthen cohesion and normative action and to clarify States' obligations with regard to the rights of older persons.

23. The African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa is another major development. The Protocol covers a range of rights including access to health services, freedom from discrimination and the right to employment, social protection and education, providing a framework for Governments to protect those rights.

24. The adoption of the Sustainable Development Goals by the General Assembly on 25 September 2015 represents an important step forward, as older persons are included directly or by implication in 15 of the 17 global Goals. In particular, Goal 3: Ensure healthy lives and promote well-being for all at all ages, will be instrumental in fighting age discrimination within health systems to ensure that older persons around the world enjoy their basic human right to the highest attainable standard of health and well-being as they age. The challenge ahead is to ensure that those commitments are followed through and the goals are met.

[2] See http://social.un.org/ageing-working-group/documents/OHCHR%20Background%20paper%202011.pdf.

IV. Best practices and gaps in the implementation of existing law

A. Mandate and methodology

25. In its resolution 24/20, the Human Rights Council requested the Independent Expert on the enjoyment of all human rights by older persons to assess the implementation of existing international instruments with regard to older persons while identifying best practices in the implementation of existing laws related to the promotion and protection of the rights of older persons and gaps in the implementation of existing laws.

26. Pursuant to that request, on 12 November 2015, the Independent Expert sent out a questionnaire to States and stakeholders to identify and collect best practices and good practices. As at 2 June 2016, 74 replies had been received, 40 of which had come from States, 14 from national human rights institutions, 19 from non-governmental organizations and 1 from an intergovernmental organization. The replies were posted on the OHCHR website.[3]

27. For the purpose of the present report, a best practice was considered to be a particular method, whole programme or specific intervention that had been successfully implemented in a country, that prima facie followed a human rights-based approach and that could inspire other countries. More specifically, the term "practice" is understood to include legislation, policies, strategies, statutes, national plans, regulatory and institutional frameworks, data collection, indicators, case law, administrative practices, scientific research or projects that are currently being implemented. Promising practices, that is, those that may not have been tested or may not have been in existence for long, but seem to generate positive results and have significant potential, were also taken into account.

28. The following summary is based on the information received and cites some of the practices outlined in the responses for illustrative purposes. The Independent Expert wishes to note that without in situ visits and a comprehensive review of the situation of older persons in a given country, it will not be possible to fully appraise all practices shared by the different stakeholders. She wishes to express her appreciation to those States and other entities that responded to her questionnaire and thereby contributed to building an invaluable repository of knowledge and information on the situation of older persons.

B. Legal, institutional and policy framework

29. A number of countries have adopted national strategies, action plans or specific legislation on older persons, which are sometimes comprehensive in nature or geared towards specific areas such as non-discrimination or the right to health of older persons. The involvement of older persons in the formulation of such strategies is essential in order to target the strategy, policy or law to the needs and concerns of older persons. Older persons can be involved either through the establishment of consultative bodies, which may consist of members of civil society representing the interests of older persons, or through comprehensive consultative processes between the Government and older persons, for example public consultations, working groups or more targeted focus group discussions. Consulting academics also allows for the incorporation of the results of applied research. A participatory approach is required to ensure coordination among all levels of government, such as the national, regional and local levels, and across departments and institutions.

[3] See www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/GoodPractices.aspx.

30. There are also programmes and policies that address specific groups of older persons, such as those living on the street, indigenous older persons and older lesbian, gay, bisexual, transgender and intersex persons.

31. Reference was also made in the responses to the Global Age-Friendly Cities project of the World Health Organization and its implementation. The project addresses eight areas of the urban and social environment that influence the health and quality of life of older persons. Cities and communities should adapt their structures and services to the needs of older persons in the following areas: public spaces and buildings, transport, housing, social participation, respect and social inclusion, civic participation and employment, communication, and community support and health services.

C. Care

32. The Independent Expert's report on autonomy and care contains an assessment of the challenges and concerns in the area of care, as well as detailed action-oriented recommendations. That report is complemented by the thematic study on the realization of the right to health of older persons by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/18/37).

33. Several good or promising practices were reported in the area of care. The responses, however, revealed the need for a comprehensive, all-encompassing and human rights-based approach to the care of older persons, as well as the need for coordination among sectors throughout the continuum of care, from prevention, promotion, rehabilitation, through to long-term and palliative care, including social care and other community services.

34. The existence of a dedicated body in charge of national coordination between sectors, institutions, regional and local governments can facilitate the implementation of a national strategy. Some countries, for instance, have created specific divisions or focal points at the ministerial level tasked with focusing on ageing initiatives and ensuring policy implementation.

35. Another interesting practice is the creation of a working group on care ethics within the Government, which studies ethical issues relating to care and provides non-binding advisory opinions. It also proposes the development of best practices and guidelines, as well as training subjects for professionals, for instance in the field of geriatric care ethics.

36. The right to extensive information on public support services and different means of nursing and care should be enshrined in the legislative framework. Adequate information about care, the rights of older persons and the protection available for older persons in care settings can be provided through various means, including websites, dedicated contact centres in care settings, resource centres and through other forms of advocacy. Educational materials are another important source of guidance for older persons. Clear information and advice help older persons to make informed choices about their care arrangements and enable them to stay in control of their lives.

37. The introduction of mandatory medical insurance facilitates equal access, including for older persons, to health-care services. Some countries provide access to public health care free of charge for older persons, which may include additional benefits for the most disadvantaged groups of older persons or those in precarious situations.

38. Older persons living in rural areas often have particular concerns, including in the enjoyment of their right to health. They may face challenges with regard to the availability of transportation to medical appointments, of home and community-based services and long-term care in their communities. Particular attention therefore needs to be paid to that

segment of the older population. Examples of targeted action include the formulation of rural health plans and the provision of mobile units to provide health services to older persons.

39. Ageing at home is the option often preferred by older persons. A number of countries have designed specific programmes seeking to enable older persons to live in their homes independently for as long as possible. Support and home-care services provided include nursing care, which is also provided for terminally ill older persons, social-care services and domestic assistance to older persons to avoid referral to institutional care and prevent social exclusion. One example of a comprehensive approach is the establishment of mobile multidisciplinary teams that provide social care services and health-care and paramedical services. National civic services may also be a valuable resource to assist older persons who live alone or in community centres. Regular home visits by students allow older persons to remain integrated in the community, while at the same time raising the younger generation's awareness about the rights of older persons.

40. A central aspect of home-care services, on which little information has been provided and that is not sufficiently covered by human rights instruments, is assistance and support to family members and other informal caregivers. That should include human rights, medical and human resources training, counselling and financial, social and psychological support. The attribution of care credits to informal caregivers in the calculation of their old-age pension is an official recognition of the work undertaken by informal caregivers and reduces the risk of old-age poverty among those who care for their family members, especially women.

41. Care situations can be intensive and demanding and conflict can arise within families, for instance regarding the division of care responsibilities or differing perceptions of the seriousness or impact of the parental situation and needs. Without effective management, such dysfunctional family dynamics can escalate and lead to neglect or abuse. Mediation is an alternative dispute resolution mechanism for resolving such conflicts without recourse to formalized legal proceedings.

42. Day-care centres are another way to ensure appropriate care, while avoiding institutionalization and the potential social exclusion of older persons. They also form part of the support network needed by informal caregivers. Another example is the placement in host families of older persons who do not have family support, which requires that a system is in place to provide assistance to the host families and to ensure quality control.

43. The creation of active ageing hubs within new housing estates is an innovative approach that combines learning and leisure activities with various forms of care, from assisted living services to day care and day rehabilitation.

44. There are various forms of institutional care settings providing accommodation while trying to ensure home-like conditions together with integrated health services, as well as social and psychological services, for those in need of care. It is essential in that regard that States establish quality monitoring and effective and transparent accountability mechanisms for public and private care settings and that they provide remedies in case violations are detected, for instance through a dedicated complaint mechanism. That requires clearly defined accreditation requirements and procedures, the development of benchmarks and quality standards, as well as reporting and monitoring guidelines to assess the quality of care by sufficient and well-trained staff, taking into account the evaluations of older persons themselves. A good example is the creation of an inspectorate to provide oversight for the operations of residential homes for older persons.

45. The creation of differentiated therapeutic environments within care settings allows for the provision of services that are adapted to the varying functional abilities of older persons, which creates a supportive environment for people with different needs,

preferences and abilities. Different activities will, for instance, be available for older persons with cognitive impairment or reduced mobility than those who are frail and have a partial or total lack of autonomy.

46. An interesting approach is the co-location of facilities for childcare and eldercare, which allows for the introduction of innovative programmes and the generation of interaction between the very young and the older persons.

47. Geriatric services are an essential element of care programmes for older persons in order to meet the needs of an ageing society, as their patterns of disease presentation differ from those of younger persons. They respond to treatments and therapies in different ways, and frequently have complex social needs that are related to their chronic medical conditions. The recognition of geriatrics as a medical specialty, specialized training of doctors and nurses and the establishment of geriatric centres in public and private care settings will help ensure the availability of geriatric services in various care settings and facilities.

48. Restraints are often used in the care of older persons with dementia. Methods include locked doors, forced bathing and the use of psychotropic substances, even though that may not be permitted by law. Providing information and education about how to avoid the use of restraints for both professionals and relatives will contribute to protecting the dignity of older persons and their right to decide without being restrained. That provision might encompass handbooks for professionals, informal caregivers and relatives, online training, web-based education, films, podcasts and applications to raise awareness about the rights of older persons with dementia in care settings.

49. Some countries have involved their national human rights institutions in monitoring how the human rights of older persons living in or seeking long-term care are being upheld, through visits to care institutions and interviews with authorities and other stakeholders. That helps to promote a human rights-based approach to long-term care and enables the human rights institutions to collect meaningful and qualitative data on how human rights are taken into consideration in policy and in practice.

50. A different approach that is sometimes taken is for institutional care settings or services that provide home care to carry out self-evaluations of their practices. The objective is that a positive attitude is adopted and that a culture of good as opposed to ill-treatment is created, while at the same time an awareness of the inherent risks is maintained.

D. Social protection

51. The 2010 report of the independent expert on the question of human rights and extreme poverty on the social protection of older persons (A/HRC/14/31) continues to constitute an important resource, as it provides an overview of the main protection gaps and challenges older persons face.

52. Poverty and lack of income security constitute major concerns for many older persons. Social transfers, in particular adequate pensions, significantly contribute to ensuring the financial security of older persons and are a suitable means of reducing the at-risk-of-poverty rate, their vulnerability and social exclusion.

53. A number of countries have universal basic retirement pensions and provide disability pensions and other additional allowances to supplement old age pensions in order to ensure a reasonable income for older persons and to protect them from poverty. It is important that the pensions are calculated giving due consideration to the true cost of living. Moreover, the non-contributory systems that some countries have established are preferable

to contributory social security systems, which tend to accentuate gender inequality, with older women more likely to receive lower pensions and other contributory benefits. Some countries provide social welfare grants to provide income support to infirm and older persons in need, as well as those with disabilities, in order to ensure that they have an adequate standard of living.

54. The provision of a universal public pension is an alternative model that prevents old age poverty as it is paid to every older person starting at a particular age, but regardless of income, assets, employment status or history. Since there is no mandatory retirement age, it also allows older persons to remain in the labour market for longer periods. Moreover, as it is universal, such a public pension scheme is relatively simple to administer, since no means test or employment record is required.

55. Providing information and advisory services on social security payments, pensions and retirement planning contributes to preventing old age poverty.

56. As populations continue to age, the financial sustainability of social security systems increasingly becomes a concern. Medium-term projections of the sustainability of public expenditure highlight areas that require reform.

57. The promotion of resource-generating activities will also help to reduce the risk of poverty of older persons. Particularly in developing countries, training can be provided to older persons to enable them to develop and manage microprojects, or specific credit lines can be established for older persons for the financing of resource-generating activities.

E. Right to work

58. Participation in the labour market enhances the self-esteem of older persons, their social inclusion and their financial security. Older workers should enjoy equality of opportunity and treatment in relation to all aspects of work and conditions of employment in all sectors. The practices, attitudes and legal framework that affect the equal participation of older persons in employment need to be analysed in order to design measures to prevent employment discrimination and effectively address existing barriers to older persons' participation in the workforce.

59. The establishment of a repertory of skills or an online platform of older persons serves several purposes. It enhances the esteem in which the valuable contribution of older persons is held within the family and society and enhances intergenerational solidarity. At the same time, it encourages older persons to continue to remain active and productive and enables older persons' know-how, expertise and skills to be matched up with employers' needs for expertise and advice. A critical mass of data is required for optimal functioning of the repertory. That may require awareness-raising campaigns in order for older persons to register. Encouraging volunteerism is another way to empower older persons to continue contributing to their communities and foster a positive image of older persons as contributing members of society. Employers' and networking fairs have similar objectives.

60. Changing the attitudes of employers towards older workers and raising employers' awareness of the business benefits of hiring older workers may help to create new opportunities for older persons. Other measures to encourage employers to recruit and retain older workers include financial and technical assistance. Employment of older persons in public services in designated areas, such as auxiliary roles for a limited period, should also be considered.

61. Improving older persons' access to the labour market can also be achieved by providing older jobseekers with career counselling, labour market training and subsidies for business start-ups, as well as job mediation. Opportunities for older persons with reduced

work ability can be created by temporary sheltered employment and an enabling environment, including transportation support, work-related rehabilitation, mobile counselling and experience-based counselling. Ongoing research on incentives and conducive environments that would allow older persons to extend their working lives beyond the pensionable age is important to assess the changes that need to be made in regulations, taxes, training and company environments to promote the right of older persons to work.

F. Equality and non-discrimination

62. Under international human rights law, discrimination is defined as any distinction, exclusion or restriction that has the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in any field. While that encompasses discrimination on the basis of age, and although many countries have enacted anti-discrimination legislation, ageism remains a major concern for older persons in their daily lives. It is therefore essential that legislation contain an explicit prohibition of direct and indirect discrimination on the basis of age.

63. Some countries have adopted laws that focus on the prohibition of discrimination in employment and occupation. Others have more comprehensive laws that prohibit age discrimination in various areas of public life, including accommodation, education and employment, and may even extend to the provision of goods, services and facilities. That is important as older persons' access to facilities and services, in particular financial services, such as loans and mortgages, and insurance, is often a matter of concern. Those services may simply not be available to older persons or not accessible as they may be prohibitively expensive as a result of the inappropriate use of age as a criterion, including for determining risk. Equality bodies, which can take various forms, including commissioners or ombudspersons, should be established by law to monitor age discrimination and advocate for its elimination across all areas of public life. Enforcing the right to non-discrimination requires complaint mechanisms. There are instances in which that competence is conferred on equality bodies themselves.

64. Non-discrimination in employment should encompass access to employment, self-employment and occupation, including selection criteria and recruitment conditions, including promotions, employment and working conditions, including dismissal and pay, and membership of a workers' or employers' organization.

G. Violence and abuse

65. Violence against older persons is a global phenomenon. It takes many different forms and there are indications that it occurs frequently in all types of settings. It includes discrimination in the public sphere, linguistic discrimination, isolation, neglect, financial exploitation, psychological violence and the withholding of basic needs, as well as physical attacks. Such violence often goes unnoticed and remains a taboo in many societies, as the perpetrators are frequently relatives, such as the older person's partner, spouse, children or children-in-law.

66. The lack of reliable information and data constitutes one of the obstacles to effectively addressing violence against older persons. Nationwide studies on the implementation of laws and court decisions relating to violence against older persons are essential to identify obstacles and problems in the implementation of existing laws. It is equally important to examine the different forms of violence and abuse of older persons in

various settings, taking into account a gender perspective. The findings should constitute the basis for further action.

67. Some countries have specific strategies for the prevention of elder abuse and have developed guidelines on violence prevention. The objective is to detect the level of violence in an organization or institution and to provide guidance on how to initiate violence-free treatment and care practices in older persons' and nursing homes. Training programmes, including for security forces, are essential to help prevent and detect elder abuse.

68. Little information was provided on measures to support victims of violence and abuse, such as hotlines.

69. The development of safety action plans to prevent the main threats to the security of older persons was another topic that was mentioned in questionnaire responses. The main threats were abuse in its various forms, robberies, thefts, scams and the fraudulent use of older persons' property. The action plans also seek to build older persons' confidence in the police and to encourage older persons to contribute more actively to crime prevention and to report crimes, either as victims or witnesses.

H. Participation

70. Several countries have established participatory mechanisms, such as national or local councils, to ensure the participation of older persons to guarantee that States develop age-sensitive laws and policies to implement and mainstream access to the required protection. Some bodies operate at the national level, others at the local level, and may be composed of organizations of older persons, civil society organizations working on issues of interest to older persons, experts and academics, national human rights institutions and older persons themselves. Competencies vary and include the right to put forward proposals to the Government on issues of relevance to older persons, analysing public policies relating to ageing, or providing information to the authorities on the challenges faced by older persons.

I. Adequate standard of living

71. Housing is an essential aspect of active ageing and of the ability of older persons to live an autonomous life. Adequacy and affordability is often a concern, particularly in countries where tenant protection is weak. A number of countries reported on housing or rent assistance programmes for older persons to improve their access to adequate and affordable housing.

72. There are also programmes specifically targeting older persons living on the street. They encompass comprehensive assistance in terms of food, clothing and other basic services, as well as overnight accommodation for those who do not wish to move into residences, in order to improve their quality of life.

J. Access to justice

73. Access to justice requires on the one hand enhanced awareness by older persons of their rights, legal aid and availability of effective remedies and on the other hand that their specific needs in terms of accessibility be taken into account.

74. Several countries have designed comprehensive policies to facilitate older persons' access to justice. Measures comprise preferential treatment of older persons in judicial proceedings and the provision of adequate information in an age-friendly manner, as well

as the removal of physical barriers in court buildings. Moreover, members of the judiciary receive training on the rights of older persons.

75. Individual assessments of victims of crime seek to identify during criminal proceedings those victims who are most vulnerable, such as older persons, to secondary and repeat victimization, intimidation and retaliation. That practice benefits older persons as it identifies the particular protection needs of every victim.

K. Education, training and lifelong learning

76. Lifelong learning is not only a precondition for longer participation in the labour market, it also affects the social integration of older persons. A number of countries have developed lifelong learning programmes for older persons or created third age universities. It is important to take into account the specific needs and interests of older persons in designing educational programmes, as older persons learn differently from younger ones. At the same time, it is important to maintain a range of programmes that do not exclusively target older persons, as that would be limiting and could lead to the creation of social spaces of exclusion.

77. Educational programmes that are open to younger adults and older persons foster intergenerational learning and intergenerational understanding. An example is opening up regular university courses to older persons.

78. Education and training of older persons can take many forms. Examples are courses promoting the use of information technology by older persons and their participation in online communities, online platforms to train them to become entrepreneurs or virtual academies, which offer a wider range of courses and learning opportunities for older persons to enable them to remain cognitively and socially engaged. Some municipal centres provide integrated services for older persons, from cultural and recreational activities to socio-legal services.

L. Accessibility

79. Putting in place age-friendly and barrier-free infrastructures requires the systematic inclusion of accessibility criteria in housing and building codes and in city planning and the human rights compliant involvement of architects and engineers in the design of buildings and public places.

80. Measures to transform cities and communities and make them more accessible in terms of meeting the needs of older persons must target all areas, including transportation, public space and housing, to avoid the creation of so-called prison flats and care settings. Examples of improvements to buses, trains and pedestrian infrastructure are the creation of elevators at pedestrian overhead bridges and the longer duration of the green light to enable older persons to cross traffic junctions safely. Lighting, improved footpaths, seating and the removal of architectural barriers make public spaces more accessible and age-friendly.

81. Innovative accessibility approaches to ensure independent living include concepts such as smart homes, autonomous vehicles, the use of robotics and age-friendly smart cities.

82. The deployment of mobile teams to provide services to older persons in rural and remote areas, for instance civil documents, was also reported.

M. Awareness-raising and research

83. Many States conduct awareness-raising activities, some of which focus on ageing in general to promote a positive attitude towards older persons, or on specific issues such as age discrimination. They may target the general public, specific groups, for instance civil servants or caregivers, or older persons themselves. Such activities may take various forms, such as media campaigns, courses, workshops, conferences, forums, awards, call centres or publications. In addition, raising awareness about ageing and human rights in primary schools will promote intergenerational solidarity.

84. Sensitizing public service staff seeks to emphasize the obligations of civil servants as guarantors of human rights and to promote a culture of good treatment, which will ensure that manifestations of violence and discrimination are detected and reported and that support is provided to victims.

85. Several States have developed training or information materials for older persons to raise their awareness about their specific rights and about healthy and active ageing, in order to encourage them to participate in the cultural, economic, political and social life of their communities. Some States have developed a self-advocacy online handbook designed to increase and improve the involvement of older persons in all processes that affect their human rights. The establishment of self-help groups is also useful to educate older persons about their human rights.

86. The collection of traditional knowledge contributes to fostering positive attitudes towards older persons as bearers of ancestral local knowledge that is at risk of being lost and that needs to be transferred to younger generations. Such knowledge includes traditional medicine, agricultural techniques, history, food, customs and legends, music and instruments. In some instances, local authorities are charged with recording that cultural heritage and in other circumstances, social workers, civil society or older persons themselves are involved.

87. Some countries have conducted extensive research on the situation of older persons as a first step in the development of a national policy or strategy to identify the challenges faced by older persons, their needs and preferences, as well as to monitor the implications of implementing the policies or strategies. Important sources of information are national and departmental statistics, existing social surveys and political analyses, as well as the views of experts, academics and opinion leaders.

88. The creation of partnerships between national and local authorities, the public and private sectors, academia, civil society and older persons themselves may, through cross-fertilization, generate innovation-based solutions and approaches to active and healthy ageing.

V. Madrid International Plan of Action on Ageing, 2002: human rights implications assessment

A. Background

89. The Madrid International Plan of Action on Ageing, 2002, as the global aspirational policy document on ageing, was adopted at the Second World Assembly on Ageing, held in Madrid in 2002 in order to respond to the opportunities and challenges of population ageing in the twenty-first century. The Madrid Plan of Action addresses ageing issues from a developmental perspective, but also, for the first time, links ageing to other frameworks such as human rights.

90. The Madrid Plan of Action calls for all-inclusive and simultaneous action to achieve a society for all ages. It focuses on three priority areas: older persons and development; advancing health and well-being; and ensuring enabling and supportive environments. It constitutes a practical tool to assist policymakers in those areas. It contains a number of specific recommendations, bearing in mind the common features of ageing, but also the specificities of the circumstances in each country.

91. The implementation of the Madrid Plan of Action is assessed every five years through a periodic review and appraisal process at the national level, followed by the consolidation of information at the regional level, which is coordinated by the United Nations regional commissions, and a concluding global review by the Commission for Social Development. National reviews follow a participatory, bottom-up approach involving civil society and older persons themselves. A first and second review and appraisal concluded in 2008 and 2013 respectively, while the third was launched in 2015 and is expected to conclude in 2017.

B. Methodology

92. The Human Rights Council, in its resolution 24/20, requested the Independent Expert on the enjoyment of all human rights by older persons to assess the human rights implications of the implementation of the Madrid International Plan of Action on Ageing. For the purpose of the present analysis, human rights implications have been understood as any possible effects on the promotion and protection of the human rights of older persons as a result of deliberate decisions or actions taken by States in the implementation of the Madrid Plan of Action, such as the adoption of legislation or policies.

93. In accordance with Council resolution 24/20, in which the Council requested the Independent Expert to take into account the views of stakeholders, including States, relevant regional human rights mechanisms, national human rights institutions, civil society organizations and academic institutions, a questionnaire-based review of the human rights implications of the implementation of the Madrid Plan of Action was carried out. As at 2 June 2016, 103 responses had been received, including 44 from States, and the remainder from national human rights institutions, non-governmental organizations and international organizations. They were placed on the OHCHR website.[4]

94. The questionnaire sought to capture the extent to which the implementation of the Madrid Plan of Action yielded outcomes that correlate or could be associated with an improved enjoyment by older persons of their human rights. It therefore aimed at identifying concrete measures taken by States in compliance with their obligations flowing from existing international standards further to the adoption of the Madrid Plan of Action, such as the adoption of national plans of action on ageing and specific legal, regulatory, policy or institutional frameworks dedicated to older persons, including those targeting specific groups of older persons, as well as measures that enhance the right to participation of older persons in the process of the implementation of the Madrid Plan of Action.

95. The present assessment of the human rights implications of the implementation of the Madrid Plan of Action draws on the information that the Independent Expert received in the responses to the questionnaires. Another element that the Independent Expert considered in her analysis was the extent to which States adopted a human rights-based approach in their implementation of the Madrid Plan of Action, namely, a conceptual framework normatively based on international human rights standards and operationally

[4] See the responses, with the exception of two submitted under seal, at www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/MIPAA.aspx.

directed towards promoting and protecting the rights of older persons. The questionnaire therefore sought to identify plans, policies, regulations and processes related to ageing that are anchored in a system of rights in which older persons are considered as rights holders. The questionnaire-based assessment is complemented by a content analysis of the Madrid Plan of Action in terms of human rights.

C. Madrid International Plan of Action on Ageing and human rights

96. While the Madrid Plan of Action is not a human rights document, it contains a number of references relevant to human rights and adopts a conceptual approach that is in accordance with human rights principles. In the document, States explicitly reaffirmed that the promotion and protection of all human rights and fundamental freedoms, including the right to development, are essential for creating an inclusive society for all ages, and therefore for ensuring that persons are able to age with security and dignity and to continue to participate in their societies as citizens with full rights. That constitutes a major step forward compared to the welfare-oriented Vienna International Plan of Action on Ageing adopted in 1982.

97. In article 5 of the Political Declaration and Madrid International Plan of Action on Ageing, States committed themselves to eliminating all forms of discrimination, in particular age discrimination, to ensure that all persons, as they age, enjoy a life of fulfilment, health, security and active participation in the economic, social, cultural and political life of their societies. The rights of older persons to participate in all aspects of society, to work and to health, to independence and accessibility are referred to in articles 12 and 14 respectively. Furthermore, in the introduction, the Madrid Plan of Action refers to the United Nations Principles for Older Persons, noting that they provide guidance in the areas of independence, participation, care, self-fulfilment and dignity.

98. A number of priority objectives of the Madrid Plan of Action also contain relevant human rights references. Priority direction I on older persons and development includes specific objectives on ensuring the right of older persons to participate in the social, political, cultural and economic spheres of society, as well as in decision-making processes at all levels. It also calls for the reduction of poverty among older persons and the provision of sufficient minimum income for all older persons.

99. The promotion of the right to work and freedom from age-discrimination in the workplace environment is another objective. The right to education, training and lifelong learning, the right to social protection, the right to health, including access to primary health care, long-term care and palliative care services, the training of care providers and health professionals, in particular in gerontology and geriatrics, are part of priority direction II on advancing health and well-being. Priority direction III, on ensuring enabling and supportive environments, refers to care and the situation of caregivers, elder abuse and a series of measures to fight ageism.

100. The Madrid Plan of Action furthermore pays particular attention to targeted groups of older persons, including older women, older persons with disabilities, older persons with dementia, older migrants, older persons with chronic diseases, including HIV/AIDS, older persons living in rural areas and in situations of poverty and those in emergency situations, including refugees and internally displaced older persons. The ambit is restricted to specific situations, such as in the workplace, emergency situations or care settings.

101. The priority objectives included in the Madrid Plan of Action can be related to specific norms and provisions contained in international human rights instruments, either the Universal Declaration of Human Rights or the core human rights treaties. It can therefore be assumed that the full and effective implementation of the Madrid Plan of

Action, at least of those relevant priority objectives, would yield outcomes that could be associated with an improved enjoyment of certain human rights by older persons.

102. However, the second review of the Madrid Plan of Action, in 2013, showed that overall progress in its implementation had continued to be uneven, with several shortfalls, and that gaps between policy and practice, and the mobilization of sufficient human and financial resources had remained major constraints (see E/CN.5/2013/6, paras. 80-87). It remains to be seen whether the 2017 review will yield significantly different results.

D. Human rights implications assessment

103. The existence of a national plan of action points to a State's commitment to taking steps to ensure a series of measures aimed at improving the quality of life of older persons, although the adoption of such plans does not capture the substantive coverage of the rights of older persons, or their effective implementation.[5] Most of the States that responded to the questionnaire have adopted national plans of action on ageing and others are in the process of developing such plans. Some States have integrated the rights of older persons in other national action plans, such as on human rights, in national development or social exclusion and poverty reduction action plans.

104. A human rights-based approach has been adopted in the formulation of national plans of action on ageing or policies related to older persons, according to the replies received, in countries from all regions.

105. While most national plans of action on ageing were adopted after the adoption of the Madrid Plan of Action in 2002, the information received is not conclusive as to the extent to which the Madrid Plan of Action has been used to guide government action and policies or has directly influenced legislative and policy frameworks adopted after 2002.

106. The inclusion of the rights of older persons in the constitution or other form of superior law also provides an indication of a State's commitment or intention to protecting and implementing those rights and ensuring that other legislation is in conformity with them. It is important to note however that the non-inclusion of those rights should not lead to inaccurate conclusions on the enforcement and coverage of the rights of older persons, as in some countries few rights are written into the constitution or superior laws. In such cases, a detailed analysis of jurisprudence or administrative decisions would be required.[6] The replies to the questionnaire indicate that a large number of States have included the rights of older persons at the constitutional level or in other legal and policy frameworks, often focusing on age discrimination and social protection.

107. A number of States furthermore indicated that the Madrid Plan of Action has helped raise awareness of the situation of older persons. Several countries have conducted official studies in order to better understand the situation and the needs of older persons.

108. The most frequently mentioned rights were, in the order of frequency, the rights to: social protection, care, an adequate standard of living, equality and non-discrimination, dignity and integrity, in particular elder abuse, participation, education, independence and autonomy, work, accessibility, housing, transport, culture, access to justice, and rights in risk and emergency situations.

109. Some States have adopted specific legislation and policies in order to improve the care of older persons. That has sometimes included the adoption of quality standards and

[5] OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation* (2012), p. 35.

[6] Ibid., pp. 144-145.

accreditation mechanisms for care institutions. Others have adopted minimum standards or a charter of care rights and responsibilities in home and residential care settings to guarantee high quality ageing and effective services for older persons in need of assistance.

110. Also mentioned were specific training programmes based on a human rights-based approach for informal and formal caregivers. Some States also indicated that they recognize the work of informal caregivers through financial support and other services such as respite care, information and counselling.

111. Some sectors of care, such as palliative care or care of persons with dementia received little attention in those legal, policy and programmes frameworks. The development of targeted strategies regarding persons with dementia is however under way in some countries. Little information was provided about the existence of geriatric services in care settings. Two responses specifically indicated that higher diplomas in gerontology and geriatrics are available.

112. According to the information received, the issue of elder abuse is being considered as one of the main priorities. Several States have adopted specific programmes and laws in order to fight elder abuse, while others have focused on awareness-raising campaigns. Laws prohibiting discrimination based on age have been enacted and programmes promoting non-discrimination on the ground of age are being implemented in a number of States, although the main focus is on the right to work and social protection.

113. Laws or programmes to strengthen the autonomy of older persons covered areas such as persons with terminal or incurable diseases; informed consent in health care; legal capacity, in particular of older persons with disabilities; and the freedom of choice for users of social services.

114. The accessibility programmes mentioned encompassed assistance to older persons receiving care services in their own homes or in care homes; accessibility for persons with disabilities; age-friendly municipalities and cities; standards on accessibility in civil engineering; accessibility of roads and transportation; and digital inclusion. A number of States have adopted specific programmes related to age-friendly housing options, which include accessibility, financial aspects and resettlement options.

115. Several States indicated that since the adoption of the Madrid Plan of Action, they have undertaken reforms of their pension and social protection systems to respond to the challenges of an ageing society, notably by increasing the pensionable age and contribution periods.

116. Volunteering programmes of older persons or specific policies were referenced to encourage older persons to work beyond the statutory retirement age. That sometimes included incentives for employers to hire and/or to retain older workers.

117. The vast majority of the replies indicated that older persons participated in the implementation of the Madrid Plan of Action. That includes situations in which older persons or civil society organizations of older persons participated in the subsequent development of national plans of action on ageing or any policy-related framework at the national level.

118. In a number of countries, that participation has led to the establishment of dedicated institutions, such as national councils of older persons, with varying degrees of participation by older persons and other organs, depending on the country. Other reported forms of participation include direct communication with members of the Government or parliament; participation in national conferences and round-table discussions on the rights of older persons, or other forms of public consultation mechanism, including at the regional level; the establishment of national forums on older persons; and various awareness-raising efforts to encourage the participation of older persons.

119. From this synthesis of the information provided in the questionnaire responses, it can be deduced that the Madrid Plan of Action may have informed government action on older persons and that its adoption correlates with the development and adoption of national plans of action and specific laws and policies in a number of countries. It should be noted however that where legal and policy frameworks exist, they tend to focus on issues such as care, social protection, elder abuse or non-discrimination in the workplace, without addressing the full spectrum of civil, political, social, economic and cultural rights. Similarly, government action seems to target particular groups of older persons, such as those in need of care, without considering an age and disability perspective that takes into account the homogeneity of that particular group and encompasses the diversity of the health situation of older persons and their specific needs. The trend towards mainstreaming ageing into legal, policy, social and economic development frameworks is nevertheless welcomed.

120. The Madrid Plan of Action seems to have fostered the participation of older persons at various levels. Its contribution to raising awareness about the situation of older persons, in particular by giving visibility to age discrimination and elder abuse, has also to be recognized. That is an important step forward as the need for visibility has long been considered one of the main challenges faced by older persons.

VI. Conclusions and recommendations

121. **By 2050, there will be, for the first time, more older persons than children under the age of 15 worldwide. A demographic transformation of such magnitude has far-reaching implications for society at all levels. As the world population continues to age, the human rights dimension of ageing becomes an ever-growing concern. It is essential that the analytical lens is all encompassing and embraces the full set of human rights, economic, social and cultural rights, but also civil and political rights.**

122. **Older persons face a number of particular challenges in the enjoyment of their human rights that need to be addressed urgently. Several good or promising practices in the implementation of existing laws have been reported on issues such as the development of national strategies or action plans on ageing, and in the area of care, the right to work, social protection, equality and non-discrimination, access to justice, violence and abuse, education, training and lifelong learning, the participation of older persons, accessibility and awareness-raising. None of those areas has however been covered extensively and little or no information has been received on some crucial issues such as legal capacity, quality of care, long-term care, palliative care, assistance to victims of violence and abuse, available remedies, independence and autonomy, or the right to an adequate standard of living, particularly housing. Each of the aforementioned areas raises a set of issues and protection concerns that deserve in-depth analysis. The information provided also demonstrates the need for South-South cooperation and the sharing of good practices at the regional level to guide national-level implementation taking into account regional specificities.**

123. **The information received appears to indicate that the implementation of the Madrid International Plan of Action on Ageing may have positive implications for the enjoyment of some human rights by older persons. However, uneven progress with regard to the implementation of the Madrid Plan of Action and gaps between policy and practice remain major constraints. Moreover, while the Madrid Plan of Action contains a number of references to human rights, it is not a human rights instrument and it addresses ageing issues mainly from a developmental perspective. It has not been designed to comprehensively address existing protection gaps and is therefore not sufficient to ensure the full enjoyment of their human rights by older persons.**

124. **The former United Nations High Commissioner for Human Rights, in her 2012 report on the human rights situation of older persons, concluded that existing arrangements to protect the human rights of older persons were inadequate and that dedicated measures to strengthen the international protection regime were required, such as a new dedicated international instrument and/or a new special procedure mandate (see E/2012/51, para. 66).**

125. **Similarly, the Open-ended Working Group on Ageing concluded at its sixth session, held in 2015, that the existing mechanisms designed to guarantee the full exercise of the civil, political, social, economic and cultural rights of older persons have flaws (see A/AC.278/2015/2, p. 8). A variety of proposals have been made with regard to new instruments and measures, in accordance with the Working Group's mandate, including a dedicated convention or an optional protocol to an existing convention. As the present report and its findings will be brought to the attention of the Working Group, in accordance with Council resolution 24/20, the Independent Expert calls on States to step up their efforts to determine the best way to strengthen the protection of the human rights of older persons and to consider the various proposals that have been made, notably the elaboration of a convention on the rights of older persons. It is also hoped that the Working Group will in due course present to the General Assembly a proposal containing, inter alia, the main elements that should be included in an international legal instrument to promote and protect the rights and dignity of older persons, which are not currently addressed sufficiently by existing mechanisms and therefore require further international protection, as requested by the General Assembly in its resolution 67/139 of 20 December 2012.[7] Considering that there is unanimity about the need to strengthen the protection of the human rights of older persons, existing divergences must urgently be overcome, given the millions of older persons waiting for their human rights to become a reality.**

126. **The creation of the mandate of the Independent Expert on the enjoyment of all human rights by older persons by the Human Rights Council in 2013 constituted a paradigm shift from a predominant economic and development perspective to ageing to the imperative of a human rights-based approach[8] that views older persons as subjects of law, rather than simply beneficiaries, with specific rights, the enjoyment of which has to be guaranteed by States. It has also kick-started a Geneva-based process that has received new impetus through the recent launching of the Group of Friends on the human rights of older persons. It is hoped that this will contribute to further deepening the discussions at the level of the Human Rights Council and to ensure that this human rights forum remains seized of this important matter and actively engaged in shaping tomorrow's society.**

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[7] Adopted by a recorded vote of 54 in favour to 5 against (Canada, Israel, Seychelles, South Sudan, United States of America), with 118 abstentions.

[8] See the statement of the United Nations High Commissioner for Human Rights to the United Nations System Chief Executives Board for Coordination in New York in October, 2011, entitled "The Tunis imperative: human rights in development cooperation in the wake of the Arab Spring", available at https://interagencystandingcommittee.org/system/files/legacy_files/The%20Tunis%20Imperative%20Pillay.pdf.